

Seidman - Kingsbury

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-208407

DATE: August 19, 1982

MATTER OF: Incorporated Door Systems Co.

DIGEST:

1. A potential subcontractor for a construction project who claims the Government's specifications are unduly restrictive because they exclude the product the protester distributes is an "interested party" within the meaning of GAO's Bid Protest Procedures.
2. Protest by a potential subcontractor concerning an alleged impropriety in a solicitation apparent prior to bid opening (unduly restrictive specifications) is dismissed as untimely because it was not filed until after bid opening.

Incorporated Door Systems Co. (IDS) protests the award of a construction contract by the Veterans Administration Hospital, Breckville, Ohio, on the basis that the portion of the solicitation's specifications which related to automatic door operators was proprietary to another firm, excluded the protester's product, and therefore unduly restricted competition.

IDS is not a general contractor bidding on this project but a distributor of automatic door operators who anticipated supplying those items as a subcontractor. We will consider protests by a subcontractor where a requirement in the prime contract solicitation which directly affects the subcontractor allegedly unduly restricts competition. Donald W. Close, 58 Comp. Gen. 297 (1979), 79-1 CPD 134. However, subcontractor protests must be filed within the time limits prescribed by our Bid Protest Procedures, which are at Part 21 of Title 4 of the Code of Federal Regulations. Our Procedures require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening (as here) must be filed before bid opening. 4 C.F.R. § 21.2(b)(1) (1982). The purpose for this rule is to permit our Office to recommend

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corrective action, if warranted, before the competitors' prices are exposed.

IDS' correspondence indicates that it did not file a protest with the Veterans Administration until after bids were opened and, obtaining no relief, then filed a protest here. Since IDS failed to protest prior to bid opening, its protest is untimely and is dismissed.

Harry R. Van Cleve
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Acting General Counsel